

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST  
LITIGATION

No. M 07-1827 SI  
MDL No. 1827

This Order Relates To:

No. C 10-4945 SI

TARGET CORPORATION, *et al*,

Plaintiffs,

v.

AU OPTRONICS CORPORATION, *et al*,

Defendants.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR ORDER TO SERVE  
DEFENDANT CHUNGHWA PICTURE  
TUBES THROUGH ITS U.S. COUNSEL**

Plaintiffs have filed a motion to serve a foreign defendant, Chunghwa Picture Tubes Ltd., through its U.S. counsel pursuant to Federal Rule of Civil Procedure 4(f)(3). The parties stipulated to submit the motion without oral argument, and accordingly the Court VACATES the hearing scheduled for March 25, 2011, at 9:00 a.m. For the reasons set forth below, the Court GRANTS the motion.

**BACKGROUND**

On November 1, 2010, plaintiffs Target Corporation; Sears, Roebuck and Co.; Kmart Corporation; Old Comp Inc.; Good Guys, Inc.; Radioshack Corporation; and Newegg Inc. (collectively "plaintiffs") filed a joint complaint in this Court against numerous domestic and foreign defendants, including Chunghwa Picture Tubes ("Chunghwa"), for violations of state and federal antitrust laws. Pursuant to the Judicial Panel on Multidistrict Litigation's April 20, 2007 transfer order consolidating pretrial proceedings for a number of actions and this Court's July 3, 2007 related case pretrial order #1,

1 the Clerk of this Court designated this case as related to MDL No. 1827, M 07-1827.

2 Chunghwa is a foreign corporation with headquarters in Taiwan. Taiwan is not a signatory to  
3 the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents (“Hague  
4 Convention”), and thus service cannot be effected on Chunghwa pursuant to the Hague Convention.  
5 On December 1, 2010, plaintiffs sent Chunghwa a request to waive service of summons. Chunghwa has  
6 not returned a signed waiver. Plaintiffs also contacted Chunghwa’s U.S. counsel and requested that  
7 counsel, as an agent for Chunghwa, arrange for service of process by delivery of the requisite  
8 documents. Chunghwa declined this request, thus prompting the instant motion. Plaintiffs have not  
9 attempted to initiate service on Chunghwa through the letter rogatory process.

## 10 11 DISCUSSION

12 Plaintiffs have moved to serve Chunghwa through its U.S. counsel pursuant to Federal Rule of  
13 Civil Procedure 4(f)(3). Rule 4(f)(3) permits service in a place not within any judicial district of the  
14 United States, “by . . . means not prohibited by international agreement as may be directed by the court.”  
15 Fed. R. Civ. P. 4(f)(3).<sup>1</sup> Chunghwa argues that before plaintiffs can seek to serve it through its U.S.  
16 counsel, plaintiffs must first attempt to personally serve Chunghwa via the letter rogatory process at its  
17 Taiwan address.

18 Plaintiffs contend that service through defendant’s U.S. counsel is appropriate because of the  
19 substantial difficulty, time and expense that plaintiffs would face in serving the foreign defendant in  
20 Taiwan, and the need to coordinate discovery in this case and the MDL. Plaintiffs have submitted a  
21 declaration from Matthew J. McBurney, counsel for plaintiffs. Mr. McBurney states that TransPerfect  
22 Translations International, Inc. (“TransPerfect”) has provided his law firm with an estimate of the cost  
23 of obtaining Chinese translations of plaintiffs’ complaint and other documents, and of the cost of  
24 effecting service of process on Chunghwa pursuant to letters rogatory. McBurney Decl. ¶ 7.

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27 <sup>1</sup> Federal Rule of Civil Procedure 4(h)(2) authorizes service of process on a foreign  
28 business entity in a manner prescribed by Rule 4(f) for individuals.

1 According to the TransPerfect estimate, plaintiffs will incur a charge of at least \$4,400.00 for  
2 translating Target's Complaint into Chinese for Chunghwa. *Id.* at ¶ 8. TransPerfect also estimates that  
3 plaintiffs will incur charges of approximately \$4,200 for processing the letters rogatory for Chunghwa  
4 and for paying the fees required by the U.S. Department of State for service on that entity. *Id.* In  
5 addition, Mr. McBurney states that he has "been informed that properly effecting service of process  
6 upon an entity in Taiwan through a letter rogatory often takes a year in duration." *Id.*

7 Based upon the circumstances presented here, the Court finds that it is appropriate to order  
8 service on Chunghwa through its U.S. counsel. The Ninth Circuit has rejected the argument that "Rule  
9 4(f) should be read to create a hierarchy of preferred methods of service of process. [Appellant]'s  
10 interpretation would require that a party attempt service of process by those methods enumerated in Rule  
11 4(f)(2), including diplomatic channels and letters rogatory, before petitioning the court for alternative  
12 relief under Rule 4(f)(3). We find no support for [this] position. No such requirement is found in the  
13 Rule's text, implied by its structure, or even hinted at in the advisory committee notes." *Rio Properties,*  
14 *Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1014-15 (9th Cir. 2002). The Ninth Circuit concluded "that  
15 service of process under Rule 4(f)(3) is neither a 'last resort' nor 'extraordinary relief.' It is merely one  
16 means among several which enables service of process on an international defendant." *Id.* at 1015  
17 (internal citation omitted). To the extent that defendant relies on the 1993 Advisory Committee Notes  
18 to argue that plaintiffs must show "urgency" in order to warrant alternative service, the Court disagrees.  
19 *Rio Properties* held that district courts have "sound discretion" to determine when the "particularities  
20 and necessities of a given case require alternate service of process under Rule 4(f)(3)" and noted that  
21 "trial courts have authorized a wide variety of alternative methods of service including publication,  
22 ordinary mail, mail to the defendant's last known address, delivery to the defendant's attorney, telex,  
23 and most recently, email." *Id.* at 1016. In any event, the portion of the 1993 Advisory Committee Notes  
24 that defendant quotes presents a hypothetical involving the Hague Convention, which is inapplicable  
25 here because Taiwan is not a signatory to that agreement.

26 Plaintiffs assert that service by letters rogatory is more expensive and time-consuming than  
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1 serving defendant's counsel. As plaintiffs note, earlier in the MDL the direct purchaser plaintiffs spent  
 2 many months attempting to effect service on some Taiwanese defendants through the letter rogatory  
 3 process, and this process proved time-consuming, expensive, and burdensome. *See* Docket No. 725  
 4 (Order Re: Defendant Nexgen Mediatech Inc.'s Motion to Dismiss for Insufficient Service of Process;  
 5 Quashing Service; and Granting Direct Purchaser Plaintiffs' Motion to Serve Nexgen Through its  
 6 Counsel under Fed.R.Civ.P. 4(f)(3)).<sup>2</sup> In light of the availability of alternative, speedier relief under  
 7 Rule 4(f)(3), the Court finds that there is no reason to require service through letters rogatory in the  
 8 instant action, particularly given the stage of the litigation in the MDL and the significant discovery that  
 9 is already underway in those proceedings. This action has been consolidated with the MDL and is now  
 10 part of a coordinated discovery schedule. Until plaintiffs are able to serve Chunghwa, plaintiffs will not  
 11 be able to coordinate and participate in discovery against Chunghwa with the other plaintiffs.

12 The Court also finds that service on Chunghwa through its U.S. counsel comports with due  
 13 process. Service under Rule 4(f)(3) must "comport with constitutional notions of due process," meaning  
 14 that service must be "reasonably calculated, under all the circumstances, to apprise interested parties  
 15 of the pendency of the action and afford them an opportunity to present their objections." *Rio*  
 16 *Properties*, 284 F.3d at 1016-17 (internal quotation and citation omitted). Here, the record shows that  
 17 Chunghwa has consulted its U.S. counsel regarding the MDL lawsuits and participated in the MDL  
 18 cases through its U.S. counsel. Chunghwa has been represented in the MDL by the law firm of Gibson,  
 19 Dunn & Crutcher LLP since June 2008. Since that time, Gibson Dunn has repeatedly appeared as  
 20 counsel for Chunghwa and has answered complaints, provided declarations, joined defendants' motions  
 21 to dismiss, and negotiated settlements with the direct purchaser plaintiffs and the indirect purchaser  
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 24 <sup>2</sup> In that order, the Court held that the record did not demonstrate that defendant Nexgen  
 25 Mediatech, Inc., a Taiwanese corporation, had been properly served by the letter rogatory method, and  
 26 granted the direct purchaser plaintiffs' request to serve Nexgen through its U.S. counsel. In four other  
 27 individual cases related to the MDL, the Court granted the plaintiffs' motions to serve Taiwanese  
 28 defendants, including Chunghwa, through their U.S. counsel. *See* *ATS Claim, LLC v. Epson Elecs. Am.*  
*Inc., et al.*, (Docket No. 1309), *AT&T Mobility LLC v. AU Optronics et al.*, (Docket No. 1657), *Motorola*  
*Inc. v. AU Optronics et al.*, (Docket No. 1657), *Nokia Corp. v. AU Optronics Corp.*, (Docket No. 1779),  
 and *TracFone Wireless, Inc. v. AU Optronics et al.*, (Docket No. 2109).

1 plaintiffs. Under these circumstances, the Court finds it reasonable to infer that Chunghwa has  
2 sufficient notice of this case and that service of defendant through its U.S. counsel will comport with  
3 due process. *See FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531, 534 (E.D. Va. 2005) (stating that  
4 the numerous motions filed by defendant's attorney make it "abundantly clear" that defendant has been  
5 in constant communication with his attorney); *see also In re Cathode Ray Tubes (CRT) Antitrust Litig.*,  
6 MDL No. 1917, No. 07-5944 SC, 2008 WL 4104341, at \*1 (N.D. Cal. Sept. 3, 2008) (authorizing  
7 service on foreign defendants through U.S. subsidiaries and domestic counsel); *In re LDK Solar Sec.*  
8 *Litig.*, C No. 07-5182 WHA, 2008 WL 2415186, at \*2 (N.D. Cal. June 12, 2008) (authorizing service  
9 on foreign corporation and foreign individuals on corporation's domestic subsidiary, and noting  
10 "[s]ignificantly, FRCP 4(f)(3) stands independently of FRCP 4(f)(1); it is not necessary for plaintiffs  
11 to first attempt service through 'internationally agreed means' before turning to 'any other means not  
12 prohibited by international agreement.'").

### 13 14 CONCLUSION

15 For the foregoing reasons and for good cause shown, the Court hereby GRANTS plaintiffs'  
16 motion to serve Chunghwa Picture Tubes Ltd. through its U.S. counsel pursuant to Federal Rule of Civil  
17 Procedure 4(f)(3). Docket No. 15 in C 10-4945 SI; Docket No. 2463 in M 07-1827 SI.

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19 **IT IS SO ORDERED.**

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22 Dated: March 8, 2011

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25 SUSAN ILLSTON  
26 United States District Judge  
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